

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

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JUN 13 1997

Federal Communications Commission
Office of Secretary

In the Matter of)

Advanced Television Systems)
 And Their Impact Upon The)
 Existing Television Broadcast)
 Service)

MM Docket No. 87-268

PETITION FOR PARTIAL RECONSIDERATION

Pennsylvania Telecasters, Inc. ("PTI"), by counsel and pursuant to Section 1.429 of the Commission's Rules (47 C.F.R. §1.429) hereby respectfully submits its Petition for Partial Reconsideration, relative to the *Sixth Report and Order*, FCC 97-115, released in this proceeding April 21, 1997 (6th R&O). The 6th R&O adopted a Table of Allotments for digital television (DTV), rules for DTV allotments and assignment of frequencies, and other matters. PTI requests reconsideration of that portion of the Table of Allotments that caused the deletion of vacant but applied-for UHF Channel 29 at State College, Pennsylvania. PTI would show that the deletion of that channel is inconsistent with Section 307(b) of the Communications Act of 1934, as amended, and inconsistent with the Commission's own policies set forth in the 6th R&O. In support of its request, PTI states as follows:

1. The current (pre-6th R&O) Table of Television Allotments includes, and has for some time included Channel 29 at State College, PA. [See, 47 C.F.R. §73.606(b)]. The history of this channel is relevant, in view of the fact that it has been vacant, but unavailable for application for many years.

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2. Television Channel 29 was allotted to State College in 1972. It is the only commercial channel allotted to State College or Centre County, Pennsylvania. State College does have a non-commercial allotment (channel 59) but there has not been any station built on that channel. On information and belief, there was an application filed for Channel 29 in 1973, but it appears that the application was never granted. On November 25, 1983, a construction permit (Lion Country Television, BPCT-820714KH, as modified; call sign WXEK) was issued for the channel. That station was never built, and it apparently expired in 1990; the call sign was deleted. The Commission's records indicate that there is a construction permit for a low-power television station at State College on channel 29, but it has not been constructed and is not on the air. *Because of the pendency of the 1983 construction permit, and the timing of the cancellation of the construction permit in 1990, it has been impossible for anyone to submit an application for use of the channel for a full-power television station for almost fourteen years.*

3. PTI is a Pennsylvania Corporation, formed specifically for the purpose of establishing a new television broadcast station at State College, Pennsylvania. On September 20, 1996, in reliance on the Commission's *Sixth Further Notice of Proposed Rule Making*, FCC 96-317, released in this proceeding on August 14, 1996, PTI filed a Form 301 application for a construction permit for Channel 29 at State College, PA. The Sixth Further Notice stated, at paragraph 60 thereof, that the Commission would continue to accept applications for new NTSC stations that are filed within 30 days of the publication of the said Further Notice in the Federal

Register, so as to provide time for filing of any applications that were currently under preparation. The Commission stated also that it would continue its then-current policy of considering requests for waiver of the 1987 freeze Order on a case-by-case basis. Therefore, the PTI application, and the freeze waiver request, were submitted timely, with a request that they be substantively considered by the Commission.

4. PTI filed its application on September 20, 1996. Also filed on that date was another application for Channel 29 at State College, that of Harry J. and Anna A. Hain, file No. BPCT-960920WM. That application, and the application of PTI, are of course mutually exclusive.

5. At paragraph 104 of the 6th R&O, the Commission noted that it had, in the Sixth Further Notice, agreed to process applications on file as of September 20, 1996 (*See, the 6th R&O, at fn. 173*). That paragraph stated:

Consistent with our proposal to eliminate all existing vacant NTSC allotments, we stated that we would not accept additional applications for new NTSC stations that are filed after 30 days from the publication of the Sixth Further Notice in the Federal Register. We stated that as we process the applications on file now and those that are filed before the end of this filing opportunity, we would continue our current policy of considering requests for waiver of our 1987 freeze Order on a case-by-case basis. We also stated that when applications for new stations are accepted for filing, we would continue our process of issuing Public Notices that "cut-off" the opportunity for filing competing, mutually-exclusive applications. In connection with these cut-off notices, we stated that we would allow additional competing applications to be filed after the end of this filing opportunity. We anticipated that these applications for new NTSC TV stations on existing allotments will not have a significant negative impact on the development of the DTV Table of Allotments, but reserved the right, in specific cases, to determine that the public interest is better served if they are not granted, granted only if amended to specify reduced facilities, or granted only with a condition that limits the interference that the station would be allowed to cause.

6. At paragraph 112 of the 6th R&O, the Commission decided to delete all vacant and unapplied-for NTSC channel allotments that are not subject to then-pending rule making, but that:

Consistent with our policy stated in the Sixth Further Notice with regard to pending applications and petitions for rule making requesting new allotments, we will maintain and protect those vacant NTSC allotments that are the subject of pending applications and will avoid creating DTV allotments that would conflict with proposed new NTSC allotments. This will insure that parties who have already begun to invest in new stations...may continue to pursue their ongoing station development projects.

This having been said, the Table of Allotments contained in the 6th R&O nonetheless, without comment at all, deleted channel 29 at State College, PA; offered no NTSC or DTV replacement channel whatsoever; and instead allotted Channel 29 as DTV channel allotments at Johnstown, PA and Williamsport, PA, thus precluding the use of that channel at State College, as discussed in the engineering statement attached hereto. Furthermore, it would appear from the attached channel study done by PTI, that there is no fully-spaced alternate commercial NTSC channel that would be available under the Table of Allotments contained in the 6th R&O and that State College will be deprived of any commercial television station whatsoever.

7. Therefore, the Commission has violated its own policy as stated in the 6th R&O, and has rendered the applications of PTI and of the Hains a nullity, without adjudication or any determination of less burdensome alternatives. It is hornbook FCC law that the Commission must follow its own stated rules and policies. It is also the case that the investment of these two applicants, made in reliance on the Commission's own assurances in the Sixth Further Notice in this proceeding, cannot

be rendered worthless absent at least some substantive consideration of the Section 307(b) merits of a continued allotment at State College.

8. State College, Pennsylvania is the largest municipality in Centre County, Pennsylvania. Centre County's population has increased from an estimated 73,000 persons since the date of the Channel 29 allotment in 1972 to an estimated 131,968 as of 1995. Centre County became a Standard Metropolitan Statistical Area (SMSA) of its own in 1980. Yet, there is no local television station. The nearest broadcast television station to State College is WPSX (TV), Channel 3, licensed to Clearfield, PA., 38 miles from State College. That is a non-commercial station operated by Pennsylvania State University. The nearest commercial television station is Channel 10, located at Altoona, PA, 40 miles from State College. The lack of local broadcast television service and the resulting lack of effective competition has caused the residents of State College and Centre County to have to purchase costly cable or satellite television programming. There is no local news service available to Centre County originating in Centre County. Television coverage of events in Centre County is offered, if at all, only on a secondary basis by the Altoona station. The Altoona television market is separate and distinct from that of State College.

9. State College is the home of the largest higher education institution in Pennsylvania, Pennsylvania State University. There are 38,000 students that attend the University and reside during the school year in the County. Centre County has one of the lowest unemployment rates in the State; median family income is among the highest in central Pennsylvania. Retail sales in the center region were estimated to

reach One Billion Dollars in 1996. Total payroll in the SMSA in 1992 totalled just under 102 Million Dollars. According to the Pennsylvania Department of Labor and Industry Bureau of Research Statistics, the size of the civilian work force in the State College SMA (65,000) was larger than two other MSA's in Pennsylvania that have commercial television stations (Altoona and Williamsport). It is apparent that State College and Centre County are independent, thriving areas.

10. There exists a sizeable area in Centre County and three other surrounding counties, which would receive first commercial television service from a Channel 29 NTSC station. An even larger area would receive a second commercial television service; that area includes a large portion of Centre County. State College is located 134 miles from the reference coordinates of Pittsburgh, PA (determined as per Section 76.53 of the Commission's Rules) and, according to Section 73.610(b) of the Rules, the minimum co-channel separation distance for Zone 1 is 154.5 miles. Therefore, State College is located at the far eastern segment of the Pittsburgh freeze zone.

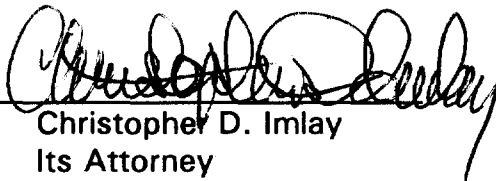
11. Thus, due to the compelling need for some commercial, over-the-air television broadcast service on the part of the 131,000 persons in Centre County and State College, and because the Commission failed to process the two timely filed, mutually-exclusive applications for Channel 29 at State College, as it stated that it would in both the Sixth Further Notice or the 6th R&O, and further because the Commission offered no analysis of the rationale for its deletion whatsoever, PTI requests, pursuant to Section 307(b) of the Communications Act of 1934, as amended, [47 U.S.C. §307(b)] that the Commission reconsider and modify the 6th

R&O to the extent that it reinstate the NTSC Channel 29 at State College; or provide an equivalent replacement allotment at State College and permit the modification of the two pending applications therefor to specify operation on that replacement channel.

Therefore, the foregoing considered, PTI respectfully requests that the Commission grant its Petition for Partial Reconsideration in the manner herein specified.

Respectfully submitted,

Pennsylvania Telecasters, Inc.

By: 
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Its Attorney

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June 13, 1997

ENGINEERING STATEMENT

prepared for
Pennsylvania Telecasters, Inc.

This engineering statement has been prepared on behalf of *Pennsylvania Telecasters, Inc.* ("*Pennsylvania*"), in support of a *Petition for Reconsideration* of the Federal Communications Commission's Sixth Report and Order ("6th R&O") in MM Docket 87-268.¹ *Pennsylvania* has a pending *Application for Construction Permit* for a new analog television station on channel 29 to serve State College, Pennsylvania (file number BPCT-960920IG). As detailed in the following, due to the close proximity of co-channel digital television ("DTV") allotments, it would appear that development of the 6th R&O's DTV table of allotments did not consider *Pennsylvania's* proposed facility. Further, no other fully-spaced commercial channel is available for a new analog station at the site proposed by *Pennsylvania*.

DTV Table of Allotments

An engineering review of the DTV table of allotments in the 6th R&O revealed that *Pennsylvania's* proposed analog channel 29 station would be subject to significant levels of predicted interference from DTV channel 29 allotments at Johnstown and Williamsport, Pennsylvania. Similarly, *Pennsylvania's* proposed channel 29 would cause significant levels of additional predicted interference to these two DTV allotments.

The distance from *Pennsylvania's* proposed site to the DTV allotments at Johnstown and Williamsport is 113.0 and 93.7 km, respectively. This distance is well short of the Zone I minimum distance of 196.3 km required for new DTV allotments not included in the initial table, as specified under the 6th R&O's new §73.623(d)(1).

An interference study was performed using an application of the terrain-dependent Longley-Rice methodology, similar to that employed by the Commission in developing the DTV

¹See FCC 97-115 *Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service*, released April 21, 1997.

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table of allotments.² The interference study evaluated the impact of the DTV allotments with respect to *Pennsylvania's* proposed analog channel 29 station.

The interference study showed that the *Pennsylvania* proposed channel 29 facility would provide noise and interference-limited coverage to 459,000 people within an area of 12,480 square kilometers, when only NTSC stations are considered as sources of interference. When the DTV stations as listed in the 6th R&O's allotment table are considered as additional interference sources, the proposed channel 29 facility's predicted coverage encompasses 302,000 people over an area of 6,670 square kilometers. This population and area covered represents only 65.8 and 53.5 percent, respectively, of that which would be covered without consideration of DTV allotments, illustrating that implementation of the 6th R&O's table of DTV allotments would sharply reduce the *Pennsylvania* proposed facility's predicted coverage area. The major contributors to the areas of predicted interference are DTV channel 29 allotments at Johnstown and Williamsport, both Pennsylvania, which provide interference over 4,585 and 1,127 square km, respectively. Given the magnitude in the reduction of NTSC service area due to DTV allotments, the proposed analog channel 29 does not appear to have been protected from interference in the DTV table of allotments.

The Johnstown and Williamsport DTV allotments are also predicted to receive additional interference, should the proposed *Pennsylvania* facility be considered. The interference study showed that the *Pennsylvania* facility would cause interference to 1,172 square km of the coverage area for the DTV channel 29 allotment at Johnstown. The Johnstown DTV channel 29 allotment's

²Although the 6th R&O refers to OET Bulletin 69 for guidance in evaluating interference using the Longley-Rice methodology, such bulletin is not available at this writing. The time-shared "HDTV" computer program offered by the National Telecommunications and Information Administration's TA Services in Boulder, Colorado was employed as the method for coverage and interference prediction. The HDTV program is based upon the Longley-Rice propagation model, which uses the methods described in the National Bureau of Standards Technical Note 101, and has been developed in close coordination with the Commission's OET staff. All area and population predictions were based on the Longley-Rice methodology as employed by TA Services and included "clipping" the extent of coverage at the Grade B contour distance, as determined with the Commission's traditional average elevation method, per the 6th R&O's Appendix B.

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interference-limited coverage area would be reduced to 94.8 percent of the area that would be covered without consideration of the *Pennsylvania* proposal.

Similarly, study results indicated that the *Pennsylvania* facility would cause interference to 546 square km of the coverage area for the DTV channel 29 allotment at Williamsport, which causes a reduction in coverage to 86.4 percent of the area that would be covered without consideration of the *Pennsylvania* proposal. Given the losses in coverage areas to the Johnstown and Williamsport DTV allotments, the study results again suggest that the *Pennsylvania* proposed NTSC channel 29 was not considered in the development of the DTV table of allotments.

Alternate NTSC Channels

A channel search was conducted for an alternate commercial NTSC channel, based on the site proposed by *Pennsylvania* using the minimum distance separation requirements of §73.610 and §73.698 with respect to NTSC assignments and the 6th R&O's new §73.623(d)(1) with respect to DTV allotments. The channel search showed that no fully-spaced alternate commercial NTSC channel is available.

Conclusion

As described above, it appears that development of the DTV table of allotments in the 6th R&O apparently did not consider *Pennsylvania's* application, as demonstrated by the close proximity of co-channel DTV allotments to the *Pennsylvania* proposed facility. No other fully-spaced channels are available for a new analog station at the site proposed by *Pennsylvania*.

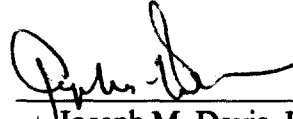
Certification

The undersigned hereby certifies that the foregoing statement was prepared by him or under his direction, and that it is true and correct to the best of his knowledge and belief. Mr. Davis is a principal in the firm of *Cavell, Mertz & Perryman, Inc.*, is a Registered Professional Engineer in Virginia, holds a Bachelor of Science degree from Old Dominion University in Electrical Engineering

ENGINEERING STATEMENT

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Technology, and has submitted numerous engineering exhibits to various local governmental authorities and the Federal Communications Commission. His qualifications are a matter of record with that agency.



Joseph M. Davis, P.E.

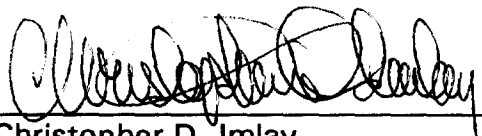
June 11, 1997

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Petition for Partial Reconsideration was sent by first class mail, this 13th day of June, 1997, to the following:

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